

The Honorable Richard A. Jones
The Honorable J. Richard Creatura

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IAN SIMMERS,

Plaintiff,

v.

KING COUNTY; the CITY OF BOTHELL;
DET. EDWARD J. HOPKINS; Sergeant.
CLEMENT RUSK; DET. REBECCA
MINER; DET. JOHN MCSWAIN; DET.
PAT RAFTUS; DET. KEN BAXTER;
CHIEF MARK ERICKS; DET. SGT.
DAVID SCHLAEGEL; and MAJ.
JACKSON BEARD; Unknown Officers of
the City of Bothell Police Department; and
Unknown Sheriff Deputies of King County,

Defendants.

No. 2:21-CV-100-JRC-RAJ

CITY DEFENDANTS' OBJECTIONS
TO REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE

NOTE ON MOTION CALENDAR:
July 30, 2021

PRELIMINARY STATEMENT

Defendants City of Bothell, Edward Hopkins, Rebecca (Miner) Donley, Mark Ericks and David Schlaegel (collectively "the City Defendants") respectfully submit these objections to the Report and Recommendation (the Report) of the Magistrate Judge. The Report erroneously (1) disregards the collateral estoppel bar to Simmers' "wrongful confession" claim (counts 1, 2), and thereby allows a state law malicious prosecution claim to survive; (2) declines to apply the collateral estoppel bar to Simmers' claims relying on an alleged lack of probable cause (counts 4, 8) and on an alleged fabrication of Olsen's trial

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1 testimony (count 3); (3) declines to apply the judicial estoppel bar to Simmers' claim "that
 2 individual defendants fabricated evidence and withheld exculpatory evidence in violation of
 3 the Sixth and Fourteenth Amendments (specifically, his rights to due process and a fair
 4 trial)" (count 3); (4) declines to apply the statute of limitations bar to Simmers' state law
 5 malicious prosecution claim (counts 4, 8); (5) declines to find Simmers lacks standing to
 6 assert claims on behalf of non-party, Jonathan Wyatt; and (6) to the extent any claims
 7 survive dismissal, allows nonspecific "group pleading" against the City Defendants.

8 BACKGROUND AND PROCEDURAL HISTORY

9 This is a civil rights and state law tort action. Plaintiff Ian Simmers claims he was
 10 wrongfully prosecuted, convicted and incarcerated for the March 11, 1995, stabbing murder
 11 of Rodney Gochanaur near the Burke Gilman trail in Bothell, Washington. Simmers
 12 confessed to undisclosed details about Gochanaur's murder during the police investigation
 13 of his involvement in area vehicle prowls, arson and malicious mischief. He later confessed
 14 additional details about Gochanaur's murder to a jailhouse informant, Kevin Olsen.

15 Prior to his criminal trial, Simmers challenged the validity of his confession to
 16 police, pursuant to CrR 3.5¹ and *State v. Furman*, 122 Wn.2d 453, 858 P.2d 1092 (1993)
 17 (criteria for juvenile confession). Dkt. #30 at pp. 344-351. The trial court held a hearing in
 18 which Simmers was represented by counsel, after which the court entered Findings of Fact
 19 and Conclusions of Law holding Simmers' confession was admissible. *Id.* at pp. 352-362.
 20 Simmers was tried as an adult for Gochanaur's murder and convicted by a jury. *Id.* at pp.
 21 363-401. He also pled guilty to two counts of Arson in the Second Degree and ten counts of
 22 Vehicle Prowl in the First Degree. *Id.* at pp. 838-860. Following the jury's verdict, the trial
 23 court entered a Judgment and Sentence. Dkt. #30 at pp. 402-408.

24 Months after Simmers was found guilty and sentenced, he moved for a new trial
 25 based on alleged *Brady*² violations associated with Olsen's testimony to Simmers' jailhouse
 26

27 ¹ CrR 3.5 - Confession Procedure.

² *Brady v. Maryland*, 373 U.S. 83 (1963). A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused.

1 confession. Dkt. #30 at pp. 409-729. The trial court again held a hearing in which Simmers
 2 was a represented by counsel, after which it entered Findings of Fact and Conclusions of
 3 Law holding there was no *Brady* violation. *Id.* at pp. 730-738. The Washington Court of
 4 Appeals affirmed the trial court’s *Brady* ruling and Simmers’ conviction. *Id.* at pp. 739-750;
 5 *see e.g. State v. Simmers*, 95 Wn. App. 1049 (1999) (unpublished).

6 On February 14, 2019, Simmers moved to vacate his conviction, pursuant to CrR
 7 7.8.³ Dkt. #30 at pp. 751-825. To establish the “newly discovered evidence” requirement of
 8 CrR 7.8(b)(2), Simmers argued that “[t]oday, there is widespread recognition that young
 9 people are particularly at risk of false confessions when questioned by police at the time of
 10 () arrest and interrogation.” Dkt. 30, p. 762:21-22; *see also* Dkt. 30, pp. 756:7-9, 761:9-15
 11 and 764:12-13. He also argued that though the police officer defendants employed the
 12 widely used and accepted Reid techniques to obtain his confession, “[a]t the time of (his)
 13 interrogation, few if any police officers contemplated that standard psychological
 14 interrogation tactics, especially when used on youthful suspects, could produce false
 15 confessions.” *Id.* at p. 762:19-21; *see generally Id.* at pp. 751- 825. Simmers argued that
 16 “[l]ittle or none of this information was available at the time to police, prosecutors, defense
 17 attorneys, judges or juries in confession cases.” *Id.* at p. 764:9-10.

18 On February 19, 2019, the State also filed a CrR 7.8 motion to vacate, informing the
 19 trial court that “[t]he evidence that led a jury to convict remains essentially the same; his
 20 confession contains facts that only the killer should have known,” but observing that
 21 Simmers had served 23.5 years of his sentence and was eligible for parole. Dkt. #30 at pp.
 22 826-834. Though the State did not agree that Simmers was innocent of Gochanaur’s murder
 23 or that he was wrongfully convicted, it concluded his motion for a new trial would likely be
 24 granted. *Id.* On February 26, 2019, the trial court entered an Order Vacating Conviction. *Id.*
 25 at pp. 835-837. After obtaining this favorable outcome, Simmers commenced suit, arguing
 26 the police officer defendants purposefully and from the outset conspired to use coercive and
 27

³ CrR 7.8 - Relief from Judgment or Order.
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1 improper tactics to obtain his false confession. Dkt. #1, *passim*.

2 The City Defendants moved to dismiss pursuant to Rule 12(c), both because
 3 Simmers' claims based on "wrongful confession" and *Brady* are barred by collateral
 4 estoppel, judicial estoppel and *Heck v. Humphrey*,⁴ and because Simmers failed to allege
 5 specific actions by the individual City Defendants. The City Defendants also argued that
 6 absent a viable constitutional claim, Simmers fails to state a claim against the City of
 7 Bothell under *Monell v. Department of Social Servs.*⁵ In ruling on that motion, the
 8 Magistrate Judge's Report and Recommendation errs in the respects noted below.

9 STANDARD OF REVIEW

10 This Court must review "*de novo* any part of the magistrate judge's disposition that
 11 has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also* L.Civ.R. 72.1(c)(2)
 12 (stating same standard); 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a *de novo*
 13 determination of those portions of the report or specified proposed findings or
 14 recommendations to which objection is made."). A district court has jurisdiction to review
 15 any part of a Magistrate Judge's report and recommendation to which a party has timely
 16 filed objection. *See* Fed.R.Civ.P. 72(b)(3). Accordingly, "the court may accept, reject, or
 17 modify, in whole or in part, the findings or recommendations made by the magistrate
 18 judge." 28 U.S.C. § 636(b) (1). The court reviews those portions of the report and
 19 recommendation to which specific written objection is made. *United States v. Reyna-Tapia*,
 20 328 F.3d 1114, 1121 (9th Cir.2003) (*en banc*).

21 OBJECTIONS AND ARGUMENT

22 I. Collateral estoppel bars the state law malicious prosecution claim

23 Though the Report correctly concludes that *Heck* bars any "federal claims that
 24 individual defendants coerced (Simmers') confession in violation of the Fifth and

25 ⁴ 512 U.S. 477 (1994). *Heck* holds that a prisoner seeking damages for an unconstitutional conviction must
 26 have the conviction reversed or otherwise declared invalid before his §1983 claim can proceed.

27 ⁵ 436 U.S. 658 (1978). *Monell* holds that liability for governmental entities on a §1983 claim requires proof
 that (1) the plaintiff possessed a constitutional right of which he was deprived; (2) the municipality had a
 policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and (4) that
 the policy is the moving force behind the constitutional violation.

1 Fourteenth Amendments (specifically, his rights to be free from self-incrimination, to
2 counsel, and due process)” (Dkt. 53, p. 6:3-5), it disregards the collateral estoppel bar to
3 Simmers’ wrongful confession claim. As a result, the Magistrate Judge erroneously allowed
4 a state law malicious prosecution claim to survive. Collateral estoppel bars that claim.

5 Washington state law determines the binding effect of rulings from a prior state
6 criminal court proceeding. *Haring v. Prosise*, 462 U.S. 306 (1983); *Ayers v. City of*
7 *Richmond*, 895 F.2d 1267, 1270 (9th Cir.1990); *Davis v. Clark County, Wash.*, 966
8 F.Supp.2d 1106 (W.D.Wash. 2013). In Washington, collateral estoppel “may be applied in
9 a civil action in which a party seeks to retry issues resolved against a defendant in a
10 previous criminal case, as well as in a civil rights action in which issues raised are the same
11 as those determined in a criminal case.” *Hanson v. Snohomish*, 121 Wn.2d 552, 561–62,
12 852 P.2d 295 (1993). Collateral estoppel bars relitigation of an *issue* in a subsequent
13 proceeding involving the same parties. *Scholz v. Washington State Patrol*, 3 Wn. App.2d
14 584, 416 P.3d 1261 92018) (barring relitigation in civil action of issues resolved in labor
15 arbitration); *Reninger v. State Dep’t of Corr.*, 134 Wn.2d 437, 454, 951 P.2d 782 (1998)
16 (barring relitigating in civil action of issues resolved in administrative proceedings). Thus,
17 rulings from a criminal trial on issues that were fully litigated serve as the basis for
18 collateral estoppel in other proceedings. *Thompson v. State, Dept. of Licensing*, 138 Wn.2d
19 783, 800, 982 P.2d 601 (1999).

20 The Report relies upon the exception to a collateral estoppel bar stated in *Hanson*,
21 finding “[t]he conviction of an accused conclusively establishes the existence of probable
22 cause, thus defeating an action for malicious prosecution, unless the conviction was
23 obtained by fraud, perjury or other corrupt means” and “this is so even where the conviction
24 is later reversed.” Dkt. 53, p. 21:2-5 (citing *Hanson*, 121 Wn.2d at 560). The Report
25 erroneously concludes, however, that Simmers’ state law malicious prosecution claim is not
26 barred simply because he alleges “fraud, perjury or other corrupt means.” Dkt. 53, p. 21:12-
27 14. That very claim was fully addressed and resolved by the criminal trial court during

1 Simmers' CrR 3.5 motion. *See* Dkt. #30 at pp. 5-362; *see also* *Hanson*, 121 Wn.2d at 561
 2 (malicious prosecution claim rested on allegations that Hansen's initial conviction was
 3 obtained by fraud, perjury or corrupt practices related to the identification procedures; fraud
 4 exception to collateral estoppel did not apply, because propriety of identification procedures
 5 was decided in the city's favor in the criminal action). The wrongdoing Simmers now
 6 alleges as "corrupt practices" was fully addressed by the trial court in an adversarial hearing
 7 in which Simmers was represented by counsel. Dkt. #30 at pp. 5-362. The Report should
 8 have found Simmers' conviction in state court conclusively established probable cause and
 9 bars his state law malicious prosecution claim.

10 **II. Collateral estoppel bars claims based on (1) alleged lack of probable cause** 11 **and (2) alleged fabrication by police officers of Olsen's trial testimony**

12 Claims alleging lack of probable cause. Because Simmers was convicted of
 13 Gochanaur's murder in state court, the Report errs in allowing claims to proceed to which
 14 probable cause operates as a defense. To prevail on a §1983 claim based on a false arrest or
 15 false imprisonment, a plaintiff "must demonstrate that there was no probable cause to arrest
 16 him." *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir.1998). To prevail on
 17 a §1983 claim for malicious prosecution, a plaintiff must demonstrate "that the defendants
 18 prosecuted [him] with malice and without probable cause, and that they did so for the
 19 purpose of denying [him] equal protection or another specific constitutional right." *Awabdy*
 20 *v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir.2004). Probable cause is a complete
 21 defense to these claims. *Hanson*, 121 Wn.2d at 558; *Haupt v. Dillard*, 17 F.3d 285, 289 (9th
 22 Cir. 1994) (state judge's finding probable cause to hold defendant for trial barred re-
 23 litigation of question whether probable cause existed).

24 Here, the issue of probable cause was determined in the state court criminal
 25 proceedings. Probable cause is a complete defense to Simmers' claims for "State Law
 26 Malicious Prosecution" (count 8), "Sixth and Fourteenth Amendment (Due Process, Fair
 27 Trial)" (count 3), and "Fourth Amendment (Detention Without Probable Cause)" (count 4).

See Dkt. #1, ¶¶182-188, 137-144 and 145-152. The Report erred in failing to so rule.

1 Claims alleging fabrication of Olsen’s trial testimony. While the Report accurately
 2 observes that the primary focus of the CrR 7.8 hearing involved an allegation that the
 3 prosecutor knew of and did not disclose an alleged monetary payment to Olsen, the ultimate
 4 issues decided against Simmers were sufficiently identical to preclude his current claim that
 5 the City Defendants fabricated Olsen’s testimony. Simmers’ counsel focused her CrR 7.8
 6 argument on payments made to Olsen by Crime Stoppers as evidence of an alleged *Brady*
 7 violation because she failed to identify evidence that the investigating officers or the
 8 prosecutor had worked to fabricate Olsen’s testimony regarding Simmers’ confession.

9 In discussing the bounds of the post-trial CrR 7.8 motion, Simmers’ counsel argued
 10 that she needed to question Olsen regarding his motivation for testifying in the murder trial,
 11 stating “[t]here are additional matters that I believe that I need to examine Mr. Olsen about,
 12 but in particular is Mr. Olsen’s continued assertion that he received nothing for his
 13 testimony in this case.” Dkt 30, pp. 419; 537-539. To clarify the grounds for Simmers’ CrR
 14 7.8 motion, the trial court inquired whether Simmers was proceeding on the allegation that
 15 the State failed to reveal all benefits to Olsen, which his attorney confirmed. *Id.* at pp. 717,
 16 732. This narrowed focus occurred because the testimony at the hearing revealed that
 17 nobody on the prosecution team (including police) induced Olsen to fabricate his testimony.
 18 *Id.* To this point, the trial court entered findings and conclusions that there was no evidence
 19 that Olsen received any benefit *or entered into any agreement for testimony in Simmer’s*
 20 *case. Id.* pp, 737. 537-539 (emphasis added).

21 Olsen testified that he received nothing from prosecutors, King County police or
 22 Bothell police in exchange for his testimony against Simmers. This conclusion was
 23 essential to the trial court’s holding that the State had not violated *Brady*. Had the
 24 prosecutor and/or police officers “worked with” or otherwise incentivized Olsen to testify,
 25 there would have been evidence of a *Brady* violation. *See City of Arlington v. Cent. Puget*
 26 *Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 792, 193 P.3d 1077 (2008) (collateral
 27 estoppel bars re-litigation of “issues actually litigated” and “necessarily decided” in a prior

1 adjudication). Because the trial court already held that no such incentivizing took place.
 2 Dkt. 30, p. 737 (“there is no evidence of any agreement between the State and Olsen in
 3 exchange for testimony.”). Thus, collateral estoppel also bars Simmers’ claim that the
 4 police officers induced Olsen’s testimony. This Court should bar Simmers from again
 5 asserting a claim that the City Defendants “worked with (Olsen) to fabricate his testimony”
 6 or otherwise incentivized his testimony.

7 **III. Judicial estoppel bars Simmers’ wrongful confession claim**

8 The Report erroneously declines to apply judicial estoppel to bar Simmers’ current
 9 claim that his confession was obtained by improper means, because Simmers successfully
 10 moved to vacate his conviction by representing to the trial court that the City Defendants
 11 used “widely accepted” questioning techniques in obtaining his confession. The Report
 12 concludes: “the Court does not find that it is clear plaintiff succeeded in persuading the trial
 13 court to accept an inconsistent position in 2019.” Dkt. 53, p. 23:12-13.

14 This finding is erroneous, because the *only* “newly discovered evidence” provided
 15 to the trial court in Simmers’ CrR 7.8 motion was the scientific advances regarding juvenile
 16 confession, which was not known when the City Defendants used the “widely accepted”
 17 Reid techniques in questioning Simmers. Simmers should be estopped from now asserting
 18 the inconsistent claim that those techniques were improper. Judicial estoppel exists to
 19 “protect the courts from the ‘improper use of judicial machinery’ through a party’s attempt
 20 to take advantage of both sides of a factual issue at different stages of the proceedings. *New*
 21 *Hampshire v. Maine*, 532 U.S. 742 (2001). This is exactly what Simmers attempts here.

22 For the trial court to have jurisdiction to entertain Simmers’ CrR 7.8 collateral
 23 attack on his murder conviction, the court had to find that the requirement of “newly
 24 discovered evidence” was met. This is precisely why Simmers’ counsel identified “newly
 25 discovered evidence” regarding juvenile confessions as the jurisdictional basis for his CrR
 26 7.8 motion. Contrary to the Report, Simmers *did not* argue that DNA evidence was a basis
 27 to vacate under CrR 7.8(b). Dkt. 30, pp. 753-767; Dkt. 53, p. 15, line 6-9. He simply

1 acknowledged that DNA evidence did not link him to the crime at the time of the trial or at
 2 the time of his 2019 motion to vacate. Simmers offered this lack of DNA evidence as
 3 support for his argument that the confession was the strongest evidence against him at trial
 4 and, thus, “newly discovered evidence” relating to juvenile confession justified a new trial.
 5 *Id.* To this point, the State never claimed the blood evidence on the knife used to kill
 6 Gochanauer belonged to Simmers (Dkt. #30 at pp. 25, 366, 755:4-6) and Simmers never
 7 claimed he was cut or bled during his assault on Gochanaer. Dkt. #30 at pp. 780-796.

8 That the trial court issued an order vacating Simmers’ conviction implicitly
 9 acknowledges the “newly discovered evidence” standard of CrR 7.8 was met. As a matter
 10 of law, the trial court had to conclude that the scientific evidence regarding juvenile
 11 confessions was in fact new, meaning it was not known to or able to be discovered by the
 12 parties at the time of the trial (which would have included the investigating police). After
 13 clearly benefitting from the trial court’s order vacating his conviction, Simmers is now
 14 arguing the City Defendants utilized illegal and improper questioning techniques in
 15 obtaining his confession. This argument is directly contrary to his former argument. This
 16 Court should invoke judicial estoppel to bar this contrary claim “not only to prevent a party
 17 from gaining an advantage by taking inconsistent positions, but also because of “general
 18 consideration[s] of the orderly administration of justice and regard for the dignity of
 19 judicial proceedings” and to “protect against a litigant playing fast and loose with the
 20 courts.” *Hamilton v. State Farm Fire & Casualty Co.*, 270 F.3d 778, 782 (9th Cir.2001).

21 **IV. The statute of limitations bars any state law malicious prosecution claim**

22 The Report erroneously fails to follow direct and binding Washington authority in
 23 *Gausvik v. Abbey*, 126 Wn. App. 868, 877-881, 107 P.3d 98 (2005), which expressly rejects
 24 Simmers argument that a cause of action does not accrue until a plaintiff can legally prove
 25 his case. In *Gausvik*, the Washington Court of Appeals held that state law claims of
 26 negligent investigation, outrage, negligent infliction of emotional distress, negligent
 27 supervision, malicious prosecution, false arrest, false imprisonment, and intentional

1 interference with family relationship were all barred due to the expiration of the statute of
 2 limitations. The court affirmed the trial court's dismissal of all state law claims, holding
 3 that the statute of limitations began accruing when the plaintiff was sentenced.

4 Given the precedent in *Gausvik*, it was error for the Report to instead conclude that
 5 *Flynn v. Pierce Cty.*, 16 Wn. App.2d 721, 728, 482 P.3d 980 (2021), which addressed the
 6 statute of limitations applicable to an attorney malpractice claim, controls and somehow
 7 obviates application of *Gausvik*. *Gausvik* is a state appellate court decision that specifically
 8 applies the statute of limitations to preclude a malicious prosecution claim. *Gausvik* is
 9 binding on this Court. *See Ryman v. Sears, Roebuck & Co.*, 505 F.3d 993, 994 (9th Cir.
 10 2007) ("Today we reiterate the rule that when (1) a federal court is required to apply state
 11 law, and (2) there is no relevant precedent from the state's highest court, but (3) there is
 12 relevant precedent from the state's intermediate appellate court, the federal court must
 13 follow the state intermediate appellate court decision unless the federal court finds
 14 convincing evidence that the state's supreme court likely would not follow it.").

15 Unlike *Flynn*, which involved a legal malpractice claim, *Gausvik* directly addressed
 16 the statute of limitations bar to a malicious prosecution claim. If the Washington Court of
 17 Appeals intended to change the statute of limitations accrual with regard to state law
 18 malicious prosecution claims, it would have explicitly said so. It did not. The Report errs in
 19 failing to apply *Gausvik* to bar the state law malicious prosecution claim.

20 **V. Simmers has no standing to assert Wyatt's "wrongful confession" claim**

21 The Report erroneously concludes that Simmers' allegations regarding Wyatt's
 22 confession are merely asserted as circumstantial evidence to support his own claims. But
 23 whether Wyatt's interrogation might constitute circumstantial evidence that would be
 24 admissible at trial is not the issue raised by the City Defendants. The question is whether
 25 Simmers can assert a cause of action premised on his allegation that Wyatt was unlawfully
 26 interrogated. Clearly, he cannot. Simmers lacks standing to bring a claims to vindicate
 27 Wyatt's rights. He likewise cannot claim injury arising from Wyatt's interrogation,

1 particularly where it is undisputed that Wyatt neither testified at Simmers' criminal trial nor
 2 was any evidence from Wyatt's interrogation used against Simmers. *See* Dkt. 30, pp. 26-34,
 3 364-391 Simmers specifically asserts that Wyatt's interrogation directly informs his claims
 4 against Defendants. Dkt. 40, pp. 30-31. This Court should bar for lack of standing any
 5 claim by Simmers directly premised on Wyatt's interrogation.

6 **VI. Simmers engages in improper nonspecific "group pleading"**

7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550
 8 U.S. 544, 570 (2007) preclude "group pleading." The Report concludes that *Keates v.*
 9 *Koile*, 883 F.3d 1228 (9th Cir. 2018), allows the manner in which Simmers engaged in
 10 group pleading regarding the alleged wrongdoing of the individual Defendants. This was
 11 error. Notwithstanding *Keates*, Simmers has not satisfied the basic requirement that in
 12 "§1983 suits, a plaintiff must plead that each Government-official defendant, through the
 13 official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676.

14 *Keates* involved a constitutional challenge to Child Protective Services (CPS)
 15 removing a child from her mother's custody. *Keates*, 883 F.3d at 1232. The circumstances
 16 under which a temporary custody notice was issued, which allowed for removal of the
 17 child, were central to the alleged constitutional violations. *Id.* at 1242. The Ninth Circuit
 18 held that individually named "defendants cannot be held liable for a constitutional violation
 19 under 42 U.S.C. § 1983 unless they were integral participants in the unlawful conduct." *Id.*
 20 at 1241. Thus, the Complaint in *Keates* failed to state plausible allegations against: (1) the
 21 CPS supervisor who spoke to hospital employees and was "involved early in the
 22 investigation" (there was no allegation that the supervisor collaborated in issuing the
 23 notice), (2) the social worker who sent a letter months after CPS took custody of the child
 24 to explain the basis for the agency's decision, and (3) two other individuals against whom
 25 the complaint made no specific allegations. *Id.*

26 Here, the Complaint is wholly deficient regarding Simmers' claims against former
 27 City of Bothell Detective Rebecca (Miner) Donley and former City of Bothell Chief of

1 Police, Mark Ericks. And except to the extent the Complaint alleges facts regarding the
 2 respective roles of former City of Bothell Detectives, Edward Hopkins and David
 3 Schlaegel, in obtaining Simmers' confession to police and in obtaining Olsen's trial
 4 testimony about Simmers' jailhouse confession (both of which are barred claims), the
 5 Complaint is also deficient regarding Hopkins and Schlaegel.

6 Under *Iqbal* and *Twombly*, the Court must disregard Simmers' generic allegations
 7 that "the Police Officer Defendants" violated his rights. These and similar allegations are
 8 legal conclusions, not allegations of fact. Such claims are classic examples of an
 9 "unadorned, the-defendant-unlawfully-harmed-me accusation" that must be disregarded
 10 when assessing the adequacy of pleadings. *Iqbal*, 556 U.S. at 678.

11 Unless Simmers cures this deficiency by amending his Complaint to allege specific
 12 acts or omissions by specific City Defendants and to which the individual City Defendants
 13 can respond, his claims must be dismissed unless, for the reasons stated above, such
 14 amendment would be futile. *Wheeler v. City of Santa Clara*, 894 F.3d 1046 (9th Cir. 2018).

15
 16 DATED: July 26, 2021

17 KEATING, BUCKLIN & McCORMACK, INC., P.S.

18
 19 By: /s/ Paul J. Triesch

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: July 26, 2021

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